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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/904,666	07/12/2001	Edward Anthony Bezek	CFLAY.00046	6182

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EXAMINER

NORDMEYER, PATRICIA L

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 08/16/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/904,666

Applicant(s)

BEZEK ET AL.

Examiner

Patricia L. Nordmeyer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1 – 4, 7 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase “EVOH” in claims 2 – 4, 7 and 10 is unclear, which render the claims vague and indefinite. The abbreviation “EVOH” needs to be written out to its full meaning, ethylene-vinyl alcohol.

The phrase “approximately 0.1 mils thick” in claims 3 and 10 is unclear, which render the claims vague and indefinite. The word “approximately” makes the claim indefinite since the layer can be greater or less than 0.1 mils.

Correction/clarification is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

4. Claims 1 – 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Wood et al.

(USPN 5,883,161).

Wood et al. discloses a film made from ethylene vinyl alcohol (Column 2, lines 39 – 60) with a thickness between 0.1 mm and 20 mm (Column 7, lines 25 – 44) used as a barrier layer in a sealed container for a dry food product (Column 14, lines 40 – 47).

5. Claims 1 – 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Bettel, III et al.

(USPN 4,977,004).

Bettel, III et al. discloses a food container (Column 1, lines 12 – 14) for use with a variety of foods (Column 3, line 67 to Column 4, line 2) made with an inner layer of ethylene vinyl alcohol (Figure 2, #20 and Column 7, lines 30 – 33) that is in contact with the food item (Column 2, lines 51 – 54) with a thickness of 0.1 mm (Column 5, lines 29 – 31). The container is sealed through heat sealing (Column 8, lines 8-9).

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6. Claims 1 – 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Pezzoli et al. (USPN 5,491,011).

Pezzoli et al. discloses a barrier layer of ethylene vinyl alcohol (Column 3, lines 54 – 60) with a thickness between 0.23 to 0.75 mm (Column 4, lines 3 - 5). The film is used as part of a bag that is sealed for dry food products such as pet foods and animal feeds (Column 4, lines 41 – 52).

7. Claims 1 – 2 are rejected under 35 U.S.C. 102(e) as being anticipated by Vadhar (USPN 6,333,061).

Vadhar discloses a multi-layer sealed (Column 6, lines 13 – 21) article formed from four layers of film (Column 2, lines 43 – 44), where in 85 % of the film is formed from ethylene vinyl alcohol (Column 2, lines 62 – 67) used to package dry pet food (Column 1, lines 14 – 16). The film has a total thickness of 2 mm (Column 27, lines 14 – 15), giving the ethylene vinyl alcohol a thickness of 0.5 mm.

8. Claims 1 – 2 are rejected under 35 U.S.C. 102(e) as being anticipated by Ramirez (USPN 6,214,392).

Ramirez discloses a package formed of films with an individual thickness of 0.25 mm or

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less (Column 6, lines 39 – 42) that are sealed (Column 6, lines 47 – 56) to form a package for dry food products (Column 2, lines 32 – 38). One of the films is a barrier layer made from ethylene vinyl alcohol (Column 7, lines 32 – 41).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 4 – 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bettel, III et al. in view of Jones et al. (USPN 6,063,414).

Bettel, III et al. discloses a food container (Column 1, lines 12 – 14) for use with a variety of foods (Column 3, line 67 to Column 4, line 2) made with an inner layer of ethylene vinyl alcohol (Figure 2, #20 and Column 7, lines 30 – 33) that is in contact with the food item (Column 2, lines 51 – 54) with a thickness of 0.1 mm (Column 5, lines 29 – 31). The container is sealed through heat sealing (Column 8, lines 8-9). However, Bettel, III et al. fails to disclose the dry food product acting as a desiccant to draw moisture away from the ethylene vinyl alcohol layer and the dry food product comprising a water activity of less than 0.6 or 0.4 upon the sealing step.

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Jones et al. teaches dry pet food with a water activity 0.7 or less (Column 11, lines 16 – 17) that acts as a desiccant since water binds to the soluble fiber material (Column 5, lines 3 – 6) in a polymer (Column 11, lines 7 – 9) container of gas impermeable materials (Column 5, lines 1 – 2) for the purpose of packaging food that does not require preservatives or removal of oxygen to attain an increased shelf life, freshness and palatability of the dry food product.

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It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided a dry food product with a water activity 0.7 or less to act as a desiccant in a container in Bettel, III et al. in order to package food that does not require preservatives or removal of oxygen to attain an increased shelf life, freshness and palatability of the dry food product as taught by Jones et al.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Nordmeyer whose telephone number is (703) 306-5480. The examiner can normally be reached on Mon.-Thurs. from 7:00 -4:30 p.m. & alternate Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (703) 308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Patricia L. Nordmeyer
Examiner
Art Unit 1772

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August 12, 2002

[Signature]
HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

8/14/02